



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

■
Docket No. 0671-23
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 24 May 2023. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and entered active duty on 15 May 1973. Your pre-enlistment physical examination, on 22 February 1973, and self-reported medical history both noted no psychiatric or neurologic issues, symptoms, or treatment.

On 25 August 1973, you commenced a period of unauthorized absence (UA). During your period of UA, on 8 August 1974, you were apprehended and confined by civilian authorities for a charge of theft. On 25 January 1974, you appeared in civilian court and the charge of theft was dismissed. Following your civilian court appearance, you returned to military control. On 5 March 1974, you were convicted by a special court-martial (SPCM) of UA for the period from 25 August 1973 to 25 January 1974, a period totaling 153 days. As punishment, you were sentenced to confinement and forfeiture of pay.

On 28 January 1975, you were again convicted by a SPCM of UA for the period from 25 March 1974 to 2 December 1974, a period totaling 252 days. As punishment, you were sentenced to confinement, forfeiture of pay and a Bad Conduct Discharge (BCD). The BCD and confinement was suspended for a period of 12 months. On 8 April 1976, you again commenced a period of UA that subsequently concluded upon your apprehension and return to military authorities on 8 September 1976, a period totaling 153 days.

On 5 October 1976, you submitted a written request for separation for the good of the service (GOS) in lieu of trial by court-martial for the period of UA from 8 April 1976 to 8 September 1976. Prior to submitting this request, you conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you admitted your guilt to the foregoing offense and acknowledged that your characterization of service upon discharge would be Other Than Honorable (OTH) conditions. The separation authority approved your request and directed your commanding officer to discharge you with an OTH characterization of service. On 20 October 1976, you were discharged from the Marine Corps with an OTH characterization of service by reason of good of the service.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 19 October 1990, based on their determination that your discharge was proper as issued.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to change your discharge character of service and contentions that you were mentally and emotionally unfit when you entered into the Marine Corps, you were never asked or examined concerning your mental or emotional state, you truly tried to complete your time, and you gave it your all while you were in the Marine Corps considering your mental and emotional state of mind. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 11 April 2023. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided post-service evidence of treatment of mental health concerns that is temporally remote to his military service and appears unrelated. However, there is consistent evidence of complaint of mental health concerns from his initial request for review, and it is reasonable to consider that serious child abuse and neglect could result in mental health difficulties. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, particularly given his repeated and extended UA. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is post-service evidence from the Petitioner of a mental health condition that may have been experienced in military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two SPCMs and GOS request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board also noted that the misconduct that led to your GOS request was likely substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the Convening Authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. Further, the Board concurred with the AO and determined that while there is post-service evidence of a mental health condition that may have been experienced in military service, there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO noted, the available records are not sufficiently detailed to establish a nexus with your misconduct, particularly given your repeated and extended UA. Furthermore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. Even in light of the Wilkie Memo and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief.

Finally, in regards to your concerns relating to your time spent at Camp Lejeune, Public Law 112-154, Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, requires the Veterans Administration to provide health care to Veterans with one or more of 15 specified illnesses or conditions. You should contact the nearest office of the Department of Veterans Affairs (VA) concerning your right to apply for benefits or appeal an earlier unfavorable determination.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

6/5/2023

